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Brian J. Stiger
Director

COUNTY OF LOS ANGELES DEPARTMENT OF CONSUMER AND BUSINESS AFFAIRS

Members of the Board

Hilda L. Solis
Mark Ridley-Thomas
Sheila Kuehl
Don Knabe
Michael D. Antonovich

"To Enrich Lives Through Effective and Caring Service"

Date: July 31, 2015

To: Supervisor Michael D. Antonovich, Mayor
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

From: Brian J. Stiger
Director

BOARD REPORT – CLASSIFICATION OF WORKERS AT THE PORT OF LOS ANGELES AND PORT OF LONG BEACH

At the meeting of the Los Angeles County Board of Supervisors (Board) on April 28, 2015, your Board directed the Department of Consumer and Business Affairs (DCBA) and County Counsel to report back on an issue concerning the classification of truck drivers who provide services to trucking companies at the ports of Los Angeles and Long Beach. DCBA submitted the report dated May 19, 2015, to your Board proposing five recommendations on how the County of Los Angeles (County) could address these issues.

Subsequently, your Board instructed the following: 1) DCBA and County Counsel to report back within sixty days on how the County could implement those five recommendations; 2) DCBA and County Counsel to report back on the number of upheld awards or decisions that were appealed by employers relating to misclassification; 3) Chief Executive Office of Legislative Affairs and Intergovernmental Relations to report back with an analysis and the sources of funding available for the implementation plan, such as the County's General Fund, federal or State grants; 4) County Counsel to report back on the type of information that can be provided to constituents informing them of their rights and any limitations on the type of advice given; and 5) County Counsel to report back regarding whether trucking companies could be made subject to the County's Business License Ordinance and possibly regulated that way.

This report provides your Board with our proposed implementation plan as well as information responsive to specific requests posed by your Board.

The Issue

A number of truck drivers at the ports of Los Angeles and Long Beach are involved in a dispute with trucking companies concerning their employment classification as independent contractors. These truck drivers argue that they are employees but that their employers have misclassified them as independent contractors, depriving them of certain benefits to which employees are entitled. The drivers are availing themselves of legal remedies by petitioning federal, State, and local agencies to address their alleged misclassification and by filing numerous private wage and hour lawsuits.

In our initial report, DCBA proposed five recommendations for your Board's consideration to address County incidents similar to the alleged misclassification of truck drivers at the ports. Those recommendations included: 1) prevention; 2) information and referrals; 3) partnerships; 4) county contracting; and 5) legislation.

The implementation plan that follows provides a prevention and referral strategy along with potential consequences for County vendors who engage in employee misclassification.

PROPOSED IMPLEMENTATION PLAN

1. Director of Consumer and Business Affairs and County Counsel to report back to the Board in 60 days with a more detailed plan to implement the five recommended areas of action: prevention, information and referrals, partnerships, County contracting and pending legislation; including supporting the three bills before the Legislature, engaging respective community stakeholders in the process and required staffing and/or funding strategy.

Prevention

As part of a comprehensive plan to address issues of misclassification, DCBA will educate and inform port drivers and their employers as to their rights and responsibilities under the law. DCBA will launch a comprehensive educational and informational campaign that concentrates resources on informing employers of their obligations, and employees of their rights to establish an environment that fosters dialog, problem solving, and cooperation. DCBA will serve as an information resource to individuals and employers seeking to educate themselves on classification (and other wage issues) and as a referral resource for individuals and employers.

In partnership with the Labor Commissioner and other stakeholders, DCBA will monitor and identify emerging issues on this topic and prepare brochures, tip sheets, and other multi-lingual informational documents. These documents will also inform social media and website content, which will be updated regularly. The educational materials will mainly target employers since they are in the unique position to prevent these conflicts from arising.

With the help of the DCBA partners, which includes community based organizations, DCBA will identify other at-risk industries where misclassification commonly occurs. Once these industries are identified, DCBA will work with licensing boards, trade associations, and organized labor as appropriate to help disseminate educational materials. Since business owners often have demanding schedules, it is unlikely that they would attend workshops or presentations on this topic. To increase the availability of educational opportunities to these businesses, DCBA will offer webinars on emerging issues on our website. This would allow DCBA to directly discuss these issues with businesses and answer their questions in real time, while offering a convenient option for business owners under significant time constraints. The webinars will be recorded and saved online for those individuals who are unable to participate in a live webinar.

Expanding this service to educate employers on the issue of classification is an important next step. DCBA's Education and Outreach team will distribute information through the following methods:

Presentations, Trainings and Workshops:

- Develop educational materials that provide an overview of new and emerging misclassification issues affecting small businesses.
- Convene roundtable meetings to engage and inform businesses on their rights and responsibilities, discuss emerging issues affecting their industries, and provide a question and answer period to encourage dialogue.
- Serve as a "virtual small business association" to assist small businesses that do not feel comfortable, cannot afford to, or currently do not belong to business organizations where they can get new information affecting their business.
- Host business mixers for businesses to network with each other and receive information from DCBA about new laws and emerging issues.
- Develop an extensive e-mail subscription list of businesses interested in receiving information.
- Create plain language tip sheets that will be posted on our website and distributed at outreach presentations and by email.
- Make extensive use of social media to provide information and engage business owners.

Counseling and Referrals

DCBA's current infrastructure provides an effective system to triage and process inquiries and complaints that allege misclassification. Specifically, DCBA receives inquiries and complaints by phone, in person, online, or at community events.

Once a complaint is received, an intake evaluation is completed, wherein trained DCBA staff review the complaint and supporting documents to determine the best course of action. After the facts are assessed, DCBA has several in-house options to handle the complaint including: counseling; small claims court assistance; or mediation. To extend the reach of these resources, DCBA will build and strengthen partnerships with labor officials to identify labor-related complaints for referral to DCBA when our services are better suited to handle the disputes identified. This process could generate a flow of counseling inquiries referred to DCBA from its partner organizations where both port truck drivers and their employers would receive assistance in resolving their disputes.

To publicize the new information and referral services, DCBA's counseling unit, in conjunction with the outreach unit, will market the services in the ways discussed in the section above entitled "Prevention." This will encourage Los Angeles County port truck drivers and business owners who are having classification disputes to contact DCBA for information, counseling, assistance, and referrals to the correct agencies and organizations.

Partnerships and Collaborative Efforts

Where feasible, DCBA will partner with other local, State, and federal agencies along with community based organizations to share information and monitor the evolving situation at the ports. Many community based organizations have deep connections in the diverse communities within the County and their assistance in identifying classification issues would be invaluable. By engaging these organizations, the County will develop partnerships that will increase the County's success in identifying and addressing such disputes.

DCBA has connected with the Labor Commissioner, organized Labor, and business groups to develop a comprehensive strategy to address alleged wage and hour violations at the ports. The Labor Commissioner has invited DCBA to join a consortium of organizations located throughout California for the purposes of leveraging resources, sharing information, and learning best practices. DCBA expects these meetings will be convened later this year. DCBA will pursue establishing additional partnerships with the California Employment Development Department, California Department of Fair Employment and Housing, Internal Revenue Service and appropriate non-government organizations. These unique partnerships bring together the entities that will educate businesses to prevent these alleged violations and provide recourse, such as legal representation from community based organizations for the victims.

County Contracting

DCBA, Auditor-Controller (A-C), Internal Services Department (ISD), and County Counsel will review the existing processes, statutes and administrative remedies at the County's disposal that can be leveraged to deal with companies that have outstanding judgments related to misclassification or other wage and hour law violations.

These remedies include Debarment, the Contractor Alert Reporting Database; boilerplate language in County solicitations requiring wage and hour compliance; and encouraging companies that contract with the County to include disclosures on pay check stubs.

Contractor Alert Reporting Database (CARD)

The A-C administers the Contractor Alert Reporting Database (CARD). This is a database that departments may use to report on poorly performing County contractors. A County department can place one of their contractors in the CARD system when the contractor has experienced financial, administrative, programmatic, or legal issues that affect their ability to comply with the County's contracting requirements. Before placing a contractor into CARD, the contractor is entitled to due process wherein documentation supporting their placement in CARD must be provided. Contractors are also given the opportunity to rectify any issues of non-compliance before being placed in the system.

Information in the CARD system is used when assessing performance history points during the solicitation process. This can result in a decreased performance history score, which may affect the bidder's likelihood of obtaining County contracts.

The CARD system may offer the framework for an effective way to maintain wage and hour compliance. DCBA, ISD and A-C will work together to assess the current capabilities of the CARD system and how it can be used to alert departments when a County contractor violates wage and hour laws.

Labor Violation Assessment Team

The County has an Assessment Team, comprised of one staff person each from the Department of Public Works (DPW), ISD and the Chief Executive Office (CEO). This inter-departmental Assessment Team was created to establish a uniform system for evaluating and scoring labor law and payroll violations and assessing those violations during the proposal evaluation process for contracts subject to the living wage.

DCBA, A-C, ISD, DPW, CEO and County Counsel will work together to examine if and how the existing role of the Assessment team can be leveraged to address contractor compliance with wage and hour laws and enforce disclosure of specified violations.

Other Mechanisms

In addition to CARD and the Assessment Team, DCBA will work with A-C, ISD and the CEO to explore other county mechanisms that could effectively evaluate and monitor compliance with wage and hour laws during the County contracting process.

Procurement Solicitations

Current County solicitations require businesses to comply with certain requirements that the County finds of particular importance. For example, solicitations include language requiring adherence to the County Child Support Compliance and Jury Service programs. Additionally, solicitations require that contractors and subcontractors notify and provide to their employees, a fact sheet regarding the Safely Surrendered Baby Law.

DCBA will work with ISD and County Counsel to determine the feasibility of implementing a disclosure system similar to what the federal government uses. Such a system could require contractors and subcontractors with certain contracts valued at more than \$100,000 disclose violations of specified labor, employment, wage payment, and safety laws during the contract bidding process. Your Board may consider adding this as a disclosure requirement during the solicitation process. The County could also require that contractors disclose violations during annual contract performance reviews.

Additionally, DCBA recommends that the County consider requiring contractors and subcontractors to provide pay transparency information in every employee's paycheck and provide independent contractors with separate notification of their independent-contractor status so that there is clarity as to employment status, similar to contract monitoring with the federal government. These enhanced requirements would help deter unlawful classification activity.

Legislation (Interim Report)

DCBA previously submitted to your Board an interim report dated June 10, 2015, that provided an analysis on three bills in the California State legislature that could impact the current situation with port truck drivers: Assembly Bill 621 (AB 621); Assembly Bill 970 (AB 970); and Senate Bill 588 (SB 588). Attached for your reference is the June 10th interim report. In addition, below are status updates for these three measures:

AB 621 (Hernandez), which as amended June 25, 2015, would enact a limited amnesty program under which trucking companies would be relieved of statutory or civil liabilities associated with the misclassification of port drivers as independent contractors, if they agree to convert all of their commercial drivers to employees and pay all wages, benefits, and taxes owed, is scheduled to be heard by the Senate appropriations Committee on August 17, 2015.

AB 970 (Nazarian), which as amended on July 14, 2015, would authorize the State Labor Commissioner to enforce local laws regarding overtime hours, minimum wage and indemnification of employee provisions, is pending on the Senate Floor.

SB 588 (De León), which as amended July 1, 2015, would authorize the State Labor Commissioner, when enforcing nonpayment of wages, to file a lien on the property of the employer for the full amount of wages owed to an employee, is pending hearing in the Assembly Appropriations Committee.

The Chief Executive Office - Legislative Affairs and Intergovernmental Relations (CEO-IGR) notes that while AB 621, AB 970, and SB 588 would increase the authority of the State Labor Commissioner, these bills do not authorize State funding to cover the additional responsibilities included in these measures. Any request for additional resources required by the State Labor Commissioner would have to be evaluated during the annual State Budget process. As previously reported, the CEO-IGR notes that there is no Board-approved policy related to the classification of port drivers, nor the enforcement of minimum wage and overtime laws. Therefore, support of AB 621, AB 970, and SB 588 is a matter of Board determination.

2. Director of Consumer and Business Affairs and County Counsel to report back to the Board on the number of upheld awards or decisions that were appealed by employers.

Individuals who believe that they have been misclassified as independent contractors can file a claim with the Division of Labor Standards and Enforcement (DLSE) within the California Department of Industrial Relations (DIR) to recover the wages they believe they are owed. The California Labor Commissioner hears these claims.

The DIR reported that over the last three years, the DLSE has received 550 complaints relating to workers' misclassification in the trucking industry. After a decision is made by the DLSE, either party can appeal the decision in civil court. As of January 2015, the Labor Commissioner had issued 113 orders, decisions or awards (ODAs). Of these, 46 ODAs had been appealed by the employer. These appeals are currently working their way through the legal system and DCBA will provide your Board with the number of appeals upheld once that information is available.

3. Chief Executive Office of Legislative Affairs and Intergovernmental Relations to report back to the Board with an analyses and the source of funding, such as the County's General Fund, Federal or State grants

Federal and State Grant Funding Opportunities

The Chief Executive Office, Intergovernmental Affairs conducted preliminary research as to whether there currently exist any federal and/or State grants available to fund such local initiatives. At this time, it appears that no grant opportunities are available to local governments to fund activities that address the issue of the misclassification of workers.

Staffing Resources Needed for Implementation

In order to fully implement this proposed plan, DCBA requests one-time funding, in the amount of \$125,000, to fund 1.0 full-time equivalent Consumer Affairs Representative III position in DCBA's Education and Outreach Unit and associated services and supplies needed to develop and maintain the webinar series and various education materials. If approved, this position would be responsible for the development and distribution of educational materials, planning and convening community outreach events, and conducting workshops and trainings.

4. County Counsel to report back to the Board on the type of information that can be provided to constituents informing them of their rights and the limitations to the advice given

County Counsel researched potential limits on the County when providing assistance or advice to individuals with wage and hour questions. It was determined that the County may provide assistance to individuals and businesses by disseminating information and through counseling or education. This is acceptable so long as no (perception of an) attorney-client relationship is formed by providing legal advice. Only the offices of the District Attorney, Public Defender and County Counsel may engage in the practice of law or give legal advice.¹

Currently, DCBA provides information to Los Angeles County constituents to help resolve problems and answer questions. Under County Code section 2.62.030, DCBA's duties include: providing information to consumers and businesses on applicable regulations; advising them of additional resources that may be available to them; referring to other organizations and agencies where appropriate; and cultivating relationships with other public and private agencies which offer consumer and business related services.

Consistent with these duties, DCBA may provide services necessary in wage and hour inquiries, namely, providing education, information, and referrals to other agencies. Education, information, and other services may be provided to the public by DCBA as a function of the department in order to help meet the needs of individuals with wage and hour questions or complaints. Any information or services provided by DCBA should be limited so as not to conflict with existing State or federal cases or decisions.

If your Board determines additional resources are necessary, beyond what DCBA can provide, the County may review and evaluate the need for additional services.

¹ County employees are limited to performing the duties of their respective offices. Authority to provide legal advice to the public must be explicitly granted by the legislature. For example, the Attorney General and the Fair Political Practices Commission are required by law to provide advice to the public. (Gov. Code §§ 12519 and 83114.)

5. County Counsel to report back to the Board on whether trucking companies could be made subject to the County's Business License Ordinance and possibly regulated that way

County Counsel conducted research into whether trucking companies could be made subject to the County's Business License Ordinance and possibly regulated that way. The County may license and regulate businesses operating within the unincorporated areas of the County, provided that the County's authority is not preempted by State or federal law. Currently, the County does not license trucking companies, but licenses tow trucks and tank vehicles, and has been granted the authority to do so by State law. (County Code § 7.28.) The federal government imposes numerous licensing requirements and regulations on commercial vehicles traveling between the states. At the State level, the trucking industry is regulated for air emissions, inspections, highway safety and law, and truck operations. Regarding port truck drivers, existing regulations of the State and federal government may substantially limit the County's authority to license and regulate trucking companies.

In addition to the State and federal operational regulations in the trucking industry, State agencies such as the Employment Development Department, the Department of Labor Standards Enforcement and the Fair Employment and Housing Commission are tasked with the investigation and enforcement of allegations of employment and labor violations. Federal agencies that oversee issues regarding employee misclassification include the Internal Revenue Service, the National Labor Relations Board, the Department of Labor and the Equal Employment Opportunity Commission. Because of the extensive scope of State and federal regulations, additional County efforts to license and regulate port trucking companies within the unincorporated areas of the County would likely be limited.

Conclusion

This implementation plan provides a reasonable and cost effective strategy for the County to exert its influence and resources to assist ongoing efforts to address the specific issue of employee misclassification and other wage and hour violations in the County. DCBA has the infrastructure in place to expand its scope to assume these responsibilities and will work with the appropriate County departments to fully implement this plan.

If you have any questions or need additional information, please contact me at (213) 974-9750.

BS:sp

c: Executive Office, Board of Supervisors
Chief Executive Office
County Counsel

APPENDIX A

Actions to Support Misclassification Implementation Plan and Projected Timeline

PREVENTION:

Actions to Support Implementation of Recommendation	Projected Timeline for Implementation	Status
Prepare general wage and hour tip sheets in multiple languages	08/01/2015	Completed
Monitor and identify emerging issues on misclassification and other wage and hour topics	Immediate and Ongoing	DCBA will work with the Labor Commissioner, government agencies, and various stakeholders
Update social media content and website with informational documents	Immediate and Ongoing	DCBA will continuously update content as appropriate to three social media accounts
Develop e-mail subscription list of businesses interested in receiving this information	Immediate and Ongoing	DCBA has approximately 1300 subscribers currently
Convene roundtable meetings to engage businesses	10/30/2015	DCBA will work with the chambers and business associations to convene
Host business mixers	10/30/2015	DCBA will coordinate efforts with local business and trade associations
Develop and present webinars	12/31/2015	DCBA is conducting research
Establish DCBA as a “virtual small business association”	12/31/2015	DCBA is conducting research

COUNSELING AND REFERRALS:

Actions to Support Implementation of Recommendation	Projected Timeline for Implementation	Status
Publicize DCBA services that will aid workers and business owners	Immediate and Ongoing	DCBA Outreach Unit is developing a marketing plan

PARTNERSHIPS AND COLLABORATIVE EFFORTS:

Actions to Support Implementation of Recommendation	Projected Timeline for Implementation	Status
Make initial contact with Labor Commissioner, organized Labor and business groups	07/21/2015	Completed: DCBA will continue to foster these relationships to develop a comprehensive strategy to address alleged wage and hour violations at the ports
Establish additional partnerships with the California Employment Development Department, California Department of Fair Employment and Housing, Internal Revenue Service and other non-government organizations where appropriate	Immediate and Ongoing	DCBA has reached out to several agencies and is scheduling upcoming meetings

COUNTY CONTRACTING:

Actions to Support Implementation of Recommendation	Projected Timeline for Implementation	Status
Review processes, statutes, and administrative remedies to address	11/30/2015	DCBA will work with the Auditor-Controller, Internal Services

County vendors that have outstanding judgments related to misclassification or other wage and hour law violations		Department, and County Counsel
Actions to Support Implementation of Recommendation	Projected Timeline for Implementation	Status
Assess the current capabilities of the CARD system and identify opportunities to improve the system to alert departments when a County contractor violates wage and hour laws	11/30/2015	DCBA will work with the Internal Services Department, Auditor-Controller and County Counsel
Examine if and how the role of the Assessment Team can be leveraged to address contractor compliance with wage and hour laws and enforce disclosure of specified violations.	11/30/2015	DCBA will work with the Auditor-Controller, Internal Services Department, Department of Public Works, Chief Executive Office and County Counsel

LEGISLATION:

Actions to Support Implementation of Recommendation	Projected Timeline for Implementation	Status
Monitor key pieces of legislation as they progress through the State Legislature	Immediate and Ongoing	DCBA Public Policy unit will review and analyze legislative bills pertaining to wage and hour enforcement



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Date: June 11, 2015

To: Mayor Michael D. Antonovich
Supervisor Hilda Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

From: Brian J. Stiger 
Director of Consumer and Business Affairs

**INTERIM REPORT – LEGISLATIVE UPDATE REGARDING CLASSIFICATION OF
PORT TRUCK DRIVERS**

At the meeting of the Los Angeles County Board of Supervisors on April 28, 2015, your Board directed the Department of Consumer and Business Affairs (DCBA) and County Counsel to report back on an issue regarding the classification of truck drivers who provide services to port trucking companies. At the meeting of your Board on May 19, 2015, we reported back with background on the issue and proposed five (5) recommended actions for your Board's consideration. Your Board then directed DCBA and County Counsel to report back in 60 days with an implementation plan for those recommended actions. This interim report provides your Board with updated information regarding the pending state legislation surrounding the classification issue.

As part of our May 19, 2015 report, DCBA informed your Board of three (3) bills in the California state legislature that would impact the current situation with port truck drivers: Assembly Bill 621 (AB 621), Assembly Bill 970 (AB 970), and Senate Bill 588 (SB 588). Due to the time sensitive nature of the legislative process, we felt it was necessary to provide your Board this interim report in advance of the full report due on July 17, 2015.

The Chief Executive Office - Legislative Affairs and Intergovernmental Relations section has reviewed these legislative measures and their full analysis is attached.

AB 621 (Hernandez) - Classification of Port Drivers

AB 621 would enact a limited amnesty program under which trucking companies would be relieved of statutory or civil penalties associated with the misclassification of port drivers as independent contractors if they agree to convert all of their commercial drivers

to employees and pay all wages, benefits, and taxes owed. Companies have until January 1, 2017 to enter into a consent decree with the State Labor Commissioner; however, those that have a pending civil lawsuit against them in state or federal court alleging misclassification of commercial drivers where the lawsuit was filed prior to January 1, 2015 are not eligible to participate in the amnesty program.

This measure is sponsored by the California Teamsters Public Affairs Council, and supported by the California Labor Federation, AFL-CIO and Total Transportation Services, Inc. This bill enacts a limited and voluntary amnesty program with respect to the misclassification of port drivers. According to the author and the California Teamsters Public Affairs Council (sponsor), nearly all of the "owner-operator" truck drivers that haul intermodal freight to and from the ports of California have been misclassified. Supporters cite hundreds of recent cases and class action lawsuits, and they state this bill would allow the parties to come together, rectify the situation, and move forward in a productive manner.

This measure is opposed by the California Retailers Association and California Trucking Association. The California Trucking Association (CTA) opposes this bill as it does not address the key issue leading to drayage motor carriers facing this situation in the first place – misuse of the Labor Commissioner's administrative hearing process. CTA argues that claims of misclassification of commercial drivers as independent contractors are some of the most complex claims being addressed by the Labor Commissioner and therefore should not be addressed via this procedure. The CTA recommends that in order to reduce the subjectivity involved with these reviews, existing law should be amended to clarify that these complex matters are "better addressed and eventually adjudicated in the courts." CTA states that, in "concert with any discussion about partial relief of liability for penalties associated with wage claims where a dispute of employment status exists, we should first examine the mechanism generating this liability."

Current Status

AB 621 passed Assembly, ordered to Senate Rules Committee for a committee assignment on June 3, 2015.

Legislative Agenda

The Chief Executive Office - (CEO) Legislative Affairs and Intergovernmental Relations section indicates that there is no Board-approved policy related to the classification of port drivers. Therefore, support of AB 621 is a matter of Board determination.

AB 970 (Nazarian) - Enforcement of Overtime and Minimum Wage Laws

AB 970 would authorize the State Labor Commissioner to enforce laws regarding overtime hours, minimum wage and indemnification of employee provisions, including issuing citations and penalties for violations.

Under current law, the State Labor Commissioner is authorized to investigate and enforce statutes that specify the requirements for the payment of wages by employers.

AB 970 would additionally authorize the Labor Commissioner to: 1) enforce local laws regarding overtime hours, minimum wage and indemnification of employee provisions; and 2) issue citations and penalties for violations, except when the local entity with jurisdiction in the matter has already issued a citation or has initiated an investigation against an employer for the same violation.

This measure is sponsored by the California Rural Legal Assistance Foundation, and supported by Asian Americans Advancing Justice-Asian Law Caucus; Bet Tzedek Legal Services; California Employment Lawyers Association; California Immigrant Policy Center; California Labor Federation, AFL-CIO; California Nurses Association; California Teamsters Public Affairs Council; and Wage Justice Center. The bill's supporters state that this bill closes gaps in the Labor Commissioner's field enforcement authority, including the ability to issue citations for illegal charges for tools and equipment to perform an employee's job and that this bill will strengthen the Labor Commissioner's efforts to stop wage theft. Supporters state this bill will also allow the Labor Commissioner to issue a citation when she or he determines that an employer violated a local wage law when the local wage is higher than the state minimum wage.

This measure is opposed by over 20 business associations, including the California Bankers Association; California Chamber of Commerce; California Employment Law Council; and California Grocers Association, among others. Opponents of this bill, including the California Chamber of Commerce, state that it will subject employers to layers of penalties and enforcement efforts, increased annual assessments, and a limited opportunity to appeal. Additionally, opponents are concerned about the citation process. They state that the Labor Commissioner is resolving local minimum wage violations through the wage claim process, and that the current process provides a fairer opportunity for an employer to appeal a ruling it believes was issued in error.

Bill Status

AB 970 passed the Senate Committee on Labor and Industrial Relations and was re-referred to the Senate Committee on Appropriations on June 10, 2015.

Legislative Agenda

CEO - Legislative Affairs and Intergovernmental Relations section notes that there is no Board-approved policy related to the enforcement of minimum wage and overtime laws. Therefore, support of AB 970, is a matter of Board determination.

SB 588 (De León) - Non-payment of Wages

SB 588 would authorize the State Labor Commissioner, when enforcing nonpayment of wages, to file a lien on the property of the employer for the full amount of wages owed to an employee.

Existing law authorizes the State Labor Commissioner, when enforcing judgments against an employer for the nonpayment of wages or other monetary benefits, to collect such wages or benefits on behalf of the worker.

SB 588 would authorize the Labor Commissioner, when enforcing judgments against employers relating to the nonpayment of wages, to: 1) levy upon the employer's bank accounts, accounts receivable, and real and personal property; 2) discharge employers who comply with the notice of levy from any further obligations; and 3) prohibit employers that do not comply or appeal within 10 days, from conducting business in California unless the employer has obtained a surety bond of \$150,000, or, as an alternative, provided the Labor Commissioner with a notarized copy of an accord reached with the employee holding an unsatisfied final judgment.

The author cites a 2013 report published by the National Employment Law Project (NELP) and the UCLA Labor Center stating that only 17% of workers who prevailed in their wage claims before the Labor Commissioner and won a judgment were able to receive payment between 2008 and 2011. Of those who did receive a payment between 2008 and 2011, workers were able to collect 15% of what was owed.

This measure is supported by over 70 organizations, including California Labor Federation, AFL-CIO; California Employment Lawyers Association; Employment Rights Center; Los Angeles Alliance for a New Economy; SEIU California; and UCLA Labor Center, among others.

There is currently no opposition on file. Although the bill is currently unopposed, some employers have raised concerns. They would like the surety bond capped at \$150,000, with the Labor Commissioner able to ask for a lower bond. They would also like employers to have 25 days, rather than 10 days, to file a surety bond after a final order. The employer coalition would also like to remove the ability of the Labor Commissioner to retrieve attorney's fees through the lien process.

Bill Status

SB 588 passed the Senate by a vote of 26-13 and was read for the first time in the Assembly on June 2, 2015.

Legislative Agenda

CEO - Legislative Affairs and Intergovernmental Relations section reports that there is no Board-approved policy related to the nonpayment of wages and benefits. Therefore, support of SB 588 is a matter of Board determination.

Questions:

The interim report provides our bill analyses of the three bills. DCBA will be issuing a final report to your Board covering the implementation of the other four recommended actions related to this issue by July 17, 2015. If you have questions or need additional information, please contact me at (213) 974-9750.



Brian J. Stiger
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July 20, 2015

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As part of the analysis in preparing the report back, DCBA is working with County Counsel and has met with several stakeholders to solicit their feedback on the issue of classification. In order to thoroughly review this feedback, solicit ancillary feedback from partner agencies, and incorporate it into our report, DCBA requests additional time to submit this report. Currently, DCBA's report to your Board is due July 20, 2015. DCBA requests that the deadline to submit this report to your Board be extended to July 31, 2015.

Please contact me with any questions at (213) 974-9750.

c: Executive Office, Board of Supervisors
Chief Executive Office

BS:SP:an



Brian J. Stiger
Director

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Director 

REPORT – CLASSIFICATION OF PORT TRUCK DRIVERS AT THE PORTS OF LOS ANGELES AND LONG BEACH

At the meeting of the Los Angeles County Board of Supervisors on April 28, 2015, your Board directed the Department of Consumer and Business Affairs (DCBA) and County Counsel to report back on an issue concerning the classification of truck drivers who provide services to port trucking companies. This report provides your Board an overview of the subject as well as potential actions the County could implement.

ISSUE:

A number of port truck drivers in Los Angeles and Long Beach are involved in a dispute with their employers concerning their employment classification as independent contractors. Port truck drivers argue that they are employees and their employers have misclassified them as independent contractors. These truck drivers are engaging in large-scale, collective use of legal remedies by filing numerous private wage and hour lawsuits, in addition to petitioning federal, state, and local agencies to address their alleged misclassification issue.

BACKGROUND:

A majority of shipping companies operating at the ports have historically classified their drivers, referred to as drayage drivers, as independent contractors, rather than employees. Independent contractors are not entitled to minimum wage and overtime pay; cannot join unions and are not entitled to workers' compensation or unemployment insurance. They are also required to absorb a large portion of business costs, as trucking companies regularly deduct money out of paychecks for fuel and maintenance.

This has led to various civil lawsuits and complaints to government agencies. Due to drivers' private lawsuits and complaints filed with the Labor Commissioner, several port trucking companies have had judgments entered against them. In some instances, courts have ruled in these cases that the employers have misclassified their employees as independent contractors.

Last year, the National Labor Relations Board ruled workers for a major motor carrier at the Port of Long Beach were misclassified. Earlier this year, the company reclassified its 111 drivers as employees and recognized the Teamsters union. A month later, these drivers voted on a one year contract that increased their hourly wages from \$18 to \$21 per hour. The new contract also includes full medical insurance, paid leave, and overtime after 40 hours. Additionally, another large national motor carrier decided to settle a class-action misclassification suit and, facing other lawsuits, converted all California drayage drivers to employees on September 9, 2014.

Despite movement toward reclassification, many companies operating at the Port of Los Angeles and the Port of Long Beach still classify their drayage drivers as independent contractors. Some companies who have had substantial civil judgments entered against them have filed for bankruptcy instead of paying the judgments.

FEDERAL AND STATE JURISDICTION:

Oversight of employers regarding various employment issues can be provided by both federal and State agencies. Federal agencies include the National Labor Relations Board, the Department of Labor, and the Internal Revenue Service. California agencies with oversight responsibilities include the Employment Development Department, the Department of Labor Standards Enforcement, and the Fair Employment and Housing Commission.

Employees, independent contractors, or employers may consult with any of these agencies for assistance with employment issues. These issues typically relate to income tax withholding, unemployment and disability insurance, wage claims, discrimination, misclassification of independent contractors, and protection of the rights of private sector employees to join together, with or without a union, to improve wages and working conditions. Many of these issues are also ultimately resolved by legal action.

Whether enforced by the appropriate oversight agency or through legal action, consequences may include additional tax liabilities, assessments for State unemployment insurance, training taxes, and disability contributions. In addition, employers could be subject to additional penalties and fines, including possible criminal charges in certain circumstances.

Individuals who believe that they have been misclassified as independent contractors rather than employees can file a claim with the Labor Commissioner's Office, also known as the Department of Labor Standards Enforcement (DLSE) to recover wages they believe they are owed.

There are two different ways the Labor Commissioner's Office addresses wage claims:

- The majority of claims brought to the State Labor Commissioner are addressed through informal proceedings, such as a conference between the parties and the Labor Commissioner's Office. The process includes the submission of documents and does not involve investigators. This process only occurs when a person is submitting a wage claim on their own behalf. Informal proceedings include hearings on claims in which the parties present evidence and the Labor Commissioner's Office can issue an Order Decision or Award (ODA) that can become a final judgment if not appealed or upheld on appeal. The Labor Commissioner's Office reaches a judgment within fifteen days and either party may appeal to civil court.
- Claims submitted to the Labor Commissioner that involve multiple employees involve investigators from DLSE's Bureau of Field Enforcement. This type of claim includes on-site inspections in addition to a review of documents. The Labor Commissioner can issue criminal as well as civil citations under this process.

After a decision is made by the Labor Commissioner's Office either party can appeal the decision in civil court. If an employer is found liable by the Labor Commissioner's Office in a formal hearing and appeals this decision to civil court, then they are required to file a bond or make a cash deposit with the court in the full amount awarded by the Labor Commissioner's Office.

The California Department of Industrial Relations (DIR) reported that over the last three years, the Labor Commissioner's Office has received 550 complaints relating to misclassification of workers in the trucking industry. The DIR notes that hearings have been fairly fact intensive, taking from half of a day to a week to complete. As of May 2015, of the 550 complaints, the Labor Commissioner has issued 113 ODAs finding for the employees and totaling almost \$5 million. Of these, 46 ODAs had been appealed by the employer. This represents \$3.9 million of the \$5 million in awards.

COUNTY JURISDICTION:

The County's regulatory and oversight jurisdiction is limited to areas within the unincorporated County or where otherwise provided by law. If federal and state laws govern, then the County may be further preempted from providing additional regulations. This is particularly true where the employer engages in interstate commerce, over which the federal government has jurisdiction.

Your Board continues to have significant influence over important labor issues within the County.

In this regard, the Board's support for a particular position which may be provided to an oversight agency or the State legislature can have an impact on an issue.

In addition, the County as an organization and market participant, may determine that businesses who wish to contract with the County must meet certain requirements. The County currently does this by requiring contractors to pay living wages in Prop A contracts or provide paid employee jury service. If the County chooses to require additional restrictions of businesses that it contracts with, then it may do so as long as it is not preempted by federal or State law.

POTENTIAL COUNTY ACTIONS:

There are a number of actions your Board could consider to address the misclassification of workers in the County:

A. Prevention

DCBA could conduct outreach and education workshops throughout Los Angeles County for workers and employers to learn about their rights and obligations. The workshops could include information on how to prevent, identify and report wage theft violations. DCBA could work with the Los Angeles County business community to educate businesses about their rights and responsibilities under the law. DCBA would develop an outreach program and deliver to businesses as part of the Small Business Services workshops and as part of the Small Business Concierge counseling for those interested in starting a business in the County.

B. Information and Referrals

DCBA could be a source of information for any individuals wishing to file a complaint against their employer alleging that they are not being paid all of the wages that they are owed. DCBA could provide assistance to individuals interested in filing a complaint and refer the individuals to the appropriate governing agency or agencies if applicable.

When jurisdiction permits, DCBA could investigate allegations of unlawful employment classification. DCBA could work closely with regulatory agencies and refer information related to allegations of unlawful employment classification to the appropriate governing agencies.

C. Partnerships

Where feasible, DCBA can partner with other governmental agencies to share information and monitor the constantly evolving situation at the ports. Through these partnerships, the agencies could collaborate and refer information regarding cases in order to stay informed and share resources.

D. County Contracting

The County could explore implementing policies that prohibit County departments from contracting with companies that have judgments related to workers' employment status or other determinations of wage and hour law violations.

E. Pending Legislation

There are currently three bills for consideration by the California Legislature that would affect the situation with the drayage drivers. DCBA consulted with the Chief Executive Office Legislative Affairs and Intergovernmental Relations, and while the Board-approved 2015-16 State Legislative Agenda does not contain specific policies for the County to advocate on this specific matter, your Board could consider taking action to direct the Sacramento advocates to support these bills. The bills include:

Senate Bill 588, introduced by Senator Kevin De Leon, would authorize the Labor Commissioner to file a lien on all property of the employer in California for the full amount of any wages and other compensation, penalties, and interest owed to the employee. This serves to address the problem of unpaid judgments in wage and hour cases. The Labor Commissioner would have the authority to levy an employer's bank accounts, accounts receivable, and real and personal property, and the authority to provide for third-party claims against the employer's property. Moreover, under SB 588, the Labor Commissioner may require businesses that have failed to pay court orders for employee wages to post a bond of \$150,000 before continuing to do business. Businesses in the long term care industry (e.g.- hospice, skilled nursing facilities, etc.) that violate this bill may be prevented from obtaining or renewing their licenses. This would strengthen the State's authority to enforce judgments by the Labor Commissioner.

Assembly Bill 621, introduced by Assembly Member Roger Hernandez, would enact a limited amnesty program with respect to the misclassification of port truck drivers if the trucking company enters into a consent decree with the Labor Commissioner prior to January 1, 2017 where the company agrees to convert all of its commercial drivers to employees.

Under the terms of this consent decree, the motor carrier must agree to pay all wages and benefits owed to previously misclassified independent contractors and all taxes owed to the State. In exchange, the motor carrier will be relieved of all liability for statutory or civil penalties.

Assembly Bill 970, introduced by Assembly Member Nazarian, would authorize the Labor Commissioner to issue a citation should an inspection or investigation find that an employer has violated local overtime law, has paid an employee less than local minimum wage, or has failed to reimburse an employee for expenses. This bill serves to give the Labor Commissioner increased enforcement authority. The Labor Commissioner has been enforcing local wage requirements in wage claim hearings, and this bill extends the authority to issue citations for those local violations when encountered in the field.

Questions:

DCBA is continuing to monitor this issue. If you have questions or need additional information, please contact me at (213) 974-9750.